

DEC 12 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JAVIER BELTRAN-MADRID,

Defendant - Appellant.

No. 04-10128

D.C. No. CR-03-01410-CKJ

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
Cindy K. Jorgenson, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Javier Beltran-Madrid appeals the 57-month sentence imposed following his guilty plea conviction for illegal re-entry after deportation, in violation of 8 U.S.C. § 1326(a), (b)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appellant contends that the district court violated his due process rights by using information the probation office acquired during the presentence investigation interview to increase his criminal history score. We reject this contention because appellant does not claim, and the record does not suggest, that his cooperation with the probation office was involuntary. *See Derrick v. Peterson*, 924 F.2d 813, 817 (9th Cir. 1991).

Because appellant was sentenced under the then-mandatory Sentencing Guidelines and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). *See United States v. Moreno-Hernandez*, 419 F.3d 906, 915-16 (9th Cir. 2005).

Appellant's motion to file supplemental briefing is denied as moot.

REMANDED.